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YOUR GUIDE TO WORKERS' COMPENSATION

Department of Industrial Accidents

March 1992

WHAT WE DO

If you are injured or experience an occupational illness, the Department of Industrial Accidents can help you. Our staff can answer your questions about your workers' compensation benefits, and if your claim is contested, help you resolve the dispute. This booklet explains your rights and responsibilities under the commonwealth's workers' compensation system, and guides you in filing a claim, if needed.

WHERE TO START

Your employer begins the claim process. When you are unable to earn full wages for a period of five or more calendar days due to an illness or injury related to work, your employer has to report the incident to their insurance company and to this department. This report must be sent within seven business days of the fifth day of your incapacity.

The insurer must, within 14 days of receiving notification of the injury, begin to pay you disability benefits, or send you a notice of denial, listing their reasons.

The insurer may pay you benefits for up to 180 days from the date you were disabled without making a final decision on your case. This is referred to as the "Pay-without-Prejudice" period.

During this initial period the insurer may stop or reduce your payments, giving seven days written notice, listing its reasons for reducing or stopping payments.

HOW YOUR BENEFITS ARE DETERMINED

Most benefits are based on your average weekly wage (including overtime) for the period prior to your date of injury.

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Medical benefits

Who qualifies?

You qualify if you have suffered a work-related injury or illness that requires medical care. You can receive benefits for as long as medical and hospital services are required due to your injury or illness.

What are the benefits?

You are entitled to adequate and reasonable medical care. You will also be paid mileage for travel to and from medical visits. Except for your first scheduled appointment, which may be required to be with a health care provider within your employer's preferred provider arrangement, you have the right to choose your own health care professional for treatment, and to change this professional once.

Temporary total disability benefits

Who qualifies?

You qualify if your injury renders you unable to work, considering your age, training, and experience, for six or more days. You can receive these benefits for up to 156 weeks, as long as you are earning no income. You will be compensated for the first five days of disability only if you are disabled for 21 days or more.

What are the benefits?

You will get sixty percent of your average weekly wages, based on the 52 weeks prior to your injury, up to a maximum of the state's average weekly wage (SAWW).

Partial disability benefits

Who qualifies?

You qualify if you can do some work, but lose part of your earning capacity due to your injury. You can receive benefits for up to 260 weeks. For certain types of severe disability, you may qualify for benefits of up to 520 weeks.

What are the benefits?

Your benefit will be 60 percent of the difference between your average weekly wage before your injury, and the weekly wage you are now earning, or capable of earning. Your maximum compensation would be 75 percent of what your total temporary benefits would be.

Permanent and total disability benefits

Who qualifies?

You qualify if you are totally and permanently incapable of working as a result of a work-related injury or illness. You can receive benefits for as long as you are disabled.

What are the benefits?

You will get two-thirds of your average weekly wages, based on the 52 weeks prior to your injury, up to a maximum of the state's average weekly wage (SAWW). You receive a minimum of 20% of the SAWW average wage.

Permanent loss of function and disfigurement benefits

If your injury results in a permanent loss of certain specific bodily functions, or in scarring of the face, neck or hands, you qualify for a onetime payment, under Section 36 of the workers' compensation law.

This benefit is paid in addition to any other payments.

Other Benefits

Reasonable burial expenses, up to \$4000, will be paid. Surviving spouses receive weekly benefits equal to two-thirds of the deceased workers' average weekly wage, up to the SAWW, and will become eligible for yearly cost of living increase two years from the date of injury.

If the spouse remarries, each eligible child receives \$60 a week until the payments equal the total amount that the spouse would have received.

WHEN YOUR BENEFITS MAY BE REDUCED OR STOPPED

Your benefits also may be stopped or reduced for several reasons, including: if it is ordered by an arbitrator, administrative judge, reviewing board or higher court; you have returned to work (the insurer must resume benefits if within 28 days you leave work again due to your injury); the insurer has been given a medical report by your treating doctor, or an impartial medical examiner, stating that you are capable of returning to work, and your employer has reported that a suitable position is available for you; you are requested to attend an evaluation by a DIA vocational rehabilitation specialist, and you refuse to attend; or you are incarcerated after conviction for a crime.

LUMP SUM SETTLEMENTS

A lump sum is a settlement agreement or contract between you, your employer, where applicable, and your employer's workers' compensation insurer. This onetime payment will be made in place of your weekly wage compensation checks, and some other benefits. In accepting a settlement you give up certain rights, so you must consider whether lump summing your claim is in your best interests.

Your rights to future medical care for the injury may or may not be kept open following the settlement.

You have two years from the date your lump sum agreement is approved to enter into and complete a rehabilitation program, otherwise you forfeit this benefit.

WHAT IF YOUR CLAIM IS CONTESTED?

If your employer's insurance company decides to dispute your case they must send you a certified letter outlining their reasons, and informing you of your right to file a claim.

Conciliation

If you file a claim with us, you will be scheduled for an informal meeting between you, the insurer, and an employee of this department. This meeting, called a conciliation, takes place within a few weeks of you filing your claim.

At this meeting we will try to work out an agreement between all parties. If such a voluntary agreement can't be reached, your case may then be referred to one of our judges, for a conference.

Voluntary Arbitration

Any time prior to five days before a conference, you and the insurer can agree to refer your disputed case to an independent arbitrator by signing a written agreement.

Conference

The conference is also informal, but will result in the judge issuing an order, either telling the insurer to pay your benefits, or ruling that they are not liable for payments to you.

The conference order can be appealed by either party. This appeal must be filed within 14 days of issuance of the order. If either party appeals this order, a hearing on the case will be scheduled.

Hearing

The hearing is a more formal proceeding, held before the same judge

as who presided at the conference. Rules of evidence apply, and sworn testimony is taken. The judge may continue to gather information after the hearing, and then render a decision.

This decision can be appealed to the Reviewing Board within 30 days by either party.

The Reviewing Board

This board is made up of six judges, three of whom will examine the hearing transcripts, and may ask for oral arguments from the attorneys for both parties. This panel can reverse the previous judge's decision.

Review Board decisions can be appealed to the Massachusetts Court of Appeals.

DO YOU NEED A LAWYER?

You do not need an attorney to file a claim for benefits, and you are not required to have an attorney for any proceeding before the DIA. However, you may be represented by anyone you delegate, including an attorney. If you do get an attorney, the law requires that the insurer pay their fee if you win your case, although in certain cases the insurer can reduce payments to you to help pay for your legal representation. If you lose, the attorney can only charge you for expenses.

EDUCATION AND VOCATIONAL REHABILITATION SERVICES

Vocational rehabilitation

These services cover all non-medical services that you may require to return to suitable employment.

They include:

- Evaluation of your capabilities
- Vocational Testing
- Counseling/Guidance
- Workplace Modifications
- Job placement assistance
- Formal retraining

You must attend a meeting with a

DIA vocational specialist if you are requested to, or benefits will be discontinued. Also, if you refuse to take part in the rehabilitation process after being determined suitable, your weekly benefits may be reduced by 15 percent.

Public Information

Workers' compensation law can be complex, and the procedures for filing claims can be confusing. This pamphlet should answer most of your

questions, but if you should need more information, you can call any of our regional offices, or contact our public information office on our toll-free line, 1-800-323-3249.

REGIONAL OFFICES

Boston: (617) 727-4900, 600 Washington St.; **Lawrence:** (508) 683-6420, 170 Common St.; **Fall River:** (508) 676-3406, 30 Third St.; **Worcester:** (508) 753-2072, 44 Front St.; **Springfield:** (413) 736-0366, 1655 Main St.

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YOUR GUIDE TO WORKERS' COMPENSATION is published by the Department of Industrial Accidents, Office of Education and Vocational Rehabilitation, 600 Washington Street, 7th floor, Boston, MA 02111.

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